No. 80-5723

United States Court of Appeals

ELEVENTH CIRCUIT

Jan. 22, 1982

DEAN J. MCDONALD, as Collection Agent for the Trustees of the National Electrical Industry Fund,

Plaintiff-Appellee,

v.

HAMILTON ELECTRIC, INC. OF FLORIDA,

Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida.

Before MORGAN, HILL and KRAVITCH, Circuit Judges.

KRAVITCH, Circuit Judge:

This appeal arises from a decision by the United States District Court for the Middle District of Florida, holding the appellant liable for failing to comply with a provision of a collective bargaining agreement requiring the contribution of 1% of an employer's gross payroll to the National Electrical Industry Fund (NEIF), an industry promotion fund.[1] Appellant argues that it was not bound by the NEIF provision because it neither authorized the Florida West Coast Chapter of the National Electrical Contractors' Association (FWCC,

[1] Appellee, Dean J. McDonald, as Collection Agent for the Trustees of the National Electrical Industry Fund, filed suit against appellant, Hamilton Electric, Inc. of Florida, in federal district court to compel contribution to the NEIF under §301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §185(a).

NECA) to negotiate such a provision on its behalf nor ratified the NEIF. The district court held otherwise, finding that by virtue of letters of assent executed by the appellant, the FWCC, NECA was authorized to bind the appellant to the NEIF provision and that by accepting the benefits flowing from other provisions of the collective bargaining agreement and by signing the letters of assent during the term of the agreement, appellant ratified the NEIF provision. We disagree with the conclusions of the district court and accordingly reverse.

Appellant, Hamilton Electric, Inc., is a Florida corporation that engages in electrical contracting. At all times relevant to this case, appellant hired labor from local chapters of the International Brotherhood of Electrical Workers (IBEW) but was not an express party to a collective bargaining agreement with the IBEW locals. Instead, appellant executed letters of assent in which it agreed to adhere to the terms and conditions of the current collective bargaining agreements between the local unions and the FWCC, NECA and authorized the FWCC, NECA to negotiate matters on its behalf pertaining to or amending the agreements. Appellant signed a Letter of Assent A for Local Unions # 915 Inside and # 915 Residential on May 6, 1974, a Letter of Assent B for Local Union # 941 Inside on November 1, 1976, and a letter of assent, which neither party was able to discover prior to trial, for Local Union # 308 Inside.[2] None of the collective bargaining agreements to which the appellant assented contained the NEIF provision.

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[2] Letters of assent are routinely submitted by IBEW locals to all contractors requesting union labor. Generally, the execution of a letter of assent is a prerequisite to obtaining such labor. The letters are of two varieties. Letter of Assent A, the short form agreement generally submitted to contractors, has no specific termination date. It states:

> In signing this letter of assent, the undersigned firm does hereby authorize _____ as its collective bargaining representative for all matters contained in or pertaining to the current approved ____ labor agreement between the _____ and Local Union _____, IBEW. This authorization, in compliance with the current approved labor agreement, shall become effective on the ____ day of _____. It shall remain in effect until terminated by the undersigned employer giving

(footnote continues)

Subsequent to the execution of these letters of assent, NECA and IBEW negotiated the NEIF provision and several other measures, all of which were adopted by the Board of Governors of NECA in October, 1976 and ultimately were incorporated into all existing collective bargaining agreements, effective July 1, 1977.

On March 7, 1977, appellant received copies of the modified collective bargaining agreements and immediately sent letters to the business managers of all the IBEW locals from which appellant hired its employees, stating that appellant was not a member of NECA, had no intention of becoming a member, and would not contribute to the NEIF. The letters also stated that appellant would comply with all other provisions of the collective bargaining agreements. In April, 1977, appellant executed a letter of assent which it revised to expressly repudiate the NEIF provision and FWCC's authority

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(*footnote continued*)

written notice to the _____ and to the Local Union at least one hundred fifty (150) days prior to the then current anniversary date of the aforementioned approved labor agreement.

Upon request, the union will provide a contractor with a Letter of Assent B, which calls for a specific termination date. A Letter of Assent B provides:

This is to certify that the undersigned employer has examined a copy of the current approved _____ labor agreement between _____ and Local Union _____, IBEW.

The undersigned employer hereby agrees to comply with all of the terms and conditions of employment contained in the above mentioned agreement and all approved amendments thereto. It is understood that the signing of this letter of assent shall be as binding on the undersigned employer as though he had signed the above referred to agreement, including any approved amendments thereto.

This letter of assent shall become effective for the undersigned employer on the _____ day of _____ and shall remain in effect until the _____ day of _____.

If the undersigned employer does NOT intend to renew this assent, he shall so notify the Local Union in writing at least sixty (60) days prior to the termination date.

to act as its bargaining representative.[3] At no time did the appellant pay into the National Electrical Industry Fund. It did, however, continue to use labor from the IBEW local unions and adhere to all other terms and conditions of the collective bargaining agreements, including those provisions adopted at the same time as the NEIF. At trial, the district court held appellant liable for 1% of its gross payroll from July 1, 1977 until the appellant's contracts with the local unions had terminated.[4] This appeal followed.

A. Authorization

The first issue before us is whether the district court erred in holding that the appellant authorized the FWCC, NECA to

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[3] The only letter of assent appellant executed after the adoption of the NEIF provision was a Letter of Assent B for Local Union 308, IBEW, which states:

> This is to certify that the undersigned employer has examined a copy of the current approved *Residential Wireman's* labor agreement between *Hamilton Electric Inc. of Florida* and Local Union 308 IBEW.
>
> The undersigned employer hereby agrees to comply with all of the terms and conditions of employment contained in the above mentioned agreement and all approved amendments thereto. It is understood that the signing of this letter of assent shall be as binding on the undersigned employer as though he had signed the above referred to agreement, including any approved amendments thereto. "*Delete any and all reference to National Electrical Contractors Assoc. (NECA) and Article VIII (Industry Fund) from the labor agreement" see further.*
>
> This letter of assent shall become effective for the undersigned employer on the *14* day of *April, 1977* and shall remain in effect until the *31* day of *August, 1978* (termination date).
>
> If the undersigned employer does NOT intend to renew this assent, he shall so notify the Local Union in writing at least sixty (60) days prior to the termination date. "*Further—Hamilton Electric Inc. of Florida is not nor do we intend to become members of National Electrical Contractors Association (NECA) nor do we intend to pay 1% of our gross labor payroll (Article VIII) to NECA.*

The business manager of the Local Union 308, IBEW approved this letter of assent.

[4] The verdict against appellant totalled $3,716.34.

bind it to the NEIF provision by executing the letters of assent. In resolving this question, "we apply federal law and the precepts of national labor policy in the labor field, not state law relating to principal and agent in commercial transactions." *Teamsters Local Unions v. Braswell Motor Freight Lines, Inc.*, 392 F.2d 1, 9, *rehearing denied in part and granted in part*, 395 F.2d 655 (5th Cir. 1968).[5] *See e.g., Textile Workers Union of America v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 923, 1 L.Ed.2d 972 (1957). To determine the scope of authority given the FWCC, NECA, we must construe certain clauses of the letters of assent and collective bargaining agreements which the letters of assent incorporate by reference. "Of course, these clauses cannot be evaluated out of context or unmindful of the contract and industrial setting as a whole. However, unless there is patent ambiguity, the plain meaning of the words should generally be followed." *Sam Kane Packing Co., et al. v. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO*, 477 F.2d 1128, 1131 (5th Cir. 1973).

A careful reading of the letters of assent and the collective bargaining agreements to which the letters refer reveals that the NEIF provision falls beyond the scope of appellant's assent. The letters of assent are of two types. *See* note 2 *supra*. Letter of Assent A provides that "the undersigned firm does hereby authorize [FWCC] as its collective bargaining representative for all matters contained in or pertaining to the current approved ____ labor agreement between the [FWCC, N.E.C.A.] and Local Union ____, IBEW." Letter of Assent B states that "the undersigned employer hereby agrees to comply with all of the terms and conditions of employment contained in the above mentioned agreement and all amendments thereto." By executing these letters of assent, appellant agreed to be bound by any matter contained in the extant collective bargaining agreements as well as any changes negotiated by the FWCC, NECA pertaining to or amending the agreements. None of the collective bargaining agreements to which appellant expressly assented contained an NEIF provision. Thus,

[5] The Eleventh Circuit in *Bonner v. Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc) adopted as precedent the decisions of the former Fifth Circuit.

only if the NEIF provision *pertained to* or *amended* the assented-to collective bargaining agreements can we conclude that the appellant authorized the appellee to bind it to the NEIF provision.[6] To determine this, we must examine the scope of the assented-to collective bargaining agreements.

Article II of the collective bargaining agreements defines employer-union rights and states that "the employer recognizes the union as the exclusive representative of all its employees . . . for the purpose of collective bargaining in respect to wages, hours of employment and conditions of employment." Thus, the scope of the collective bargaining agreements was generally limited to mandatory subjects of bargaining. National Labor Relations Act § 8(d), 29 U.S.C. § 158(d). *See, e.g., NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 78 S.Ct. 718, 2 L.Ed.2d 823 (1958); *Axelson, Inc., Subsidiary of U.S.A. v. N.L.R.B.*, 599 F.2d 91 (5th Cir. 1979). That is not to say that the FWCC, NECA and local unions could not have adopted a permissive subject of bargaining and that the appellant could not have expressly assented to or ratified such a provision. In the absence of subsequent assent or ratification, however, the appellant could not be bound by the adoption of a permissive subject of bargaining not provided for by the assented-to labor agreements.

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[6] The appellee asserts that the scope of the authority given the FWCC, NECA by the letters of assent was plenary and not limited by the specific reference in the letters of assent to the extant collective bargaining agreements. It is a well-established rule, however, that a reference by the contracting parties to an extraneous writing makes the writing part of their agreement for the purposes specified. *Guerini Stone Co. v. P. J. Carlin Construction Co.*, 240 U.S. 264, 277, 36 S.Ct. 300, 306, 60 L.Ed. 636 (1916); *Lodges 743 and 1746, etc. v. United Aircraft*, 534 F.2d 422, 441 (2d Cir. 1975). See *Seymour v. Coughlin Co.*, 609 F.2d 346 (9th Cir. 1979). The letters of assent executed by appellant limit the FWCC, NECA's authority as appellant's bargaining representative to those matters contained in, pertaining to, or amending the "current" labor agreement. Therefore, we reject appellee's contention and examine the collective bargaining agreements in order to ascertain the authority possessed by the FWCC, NECA by virtue of the letters of assent.

This court has never specifically addressed whether an "industry promotion fund," such as the NEIF, is a mandatory or a permissive subject of bargaining. Other courts and the NLRB, however, have consistently held that industry promotion funds do not qualify as mandatory subjects of bargaining.[7] *See, e.g., N.L.R.B. v. Sheet Metal Workers International Association, Local Union No. 38,* 575 F.2d 394 (2d Cir. 1978); *N.L.R.B. v. Local 264, Laborers' International Union of North America,* 529 F.2d 778 (8th Cir. 1976); *N.L.R.B. v. Detroit Resilient Floor Decorators Local Union No. 2265,* 317 F.2d 269 (6th Cir. 1963); *Local 80, Sheet Metal Workers,* 161 N.L.R.B. 229 (1966). We Agree.

Section 8(d) of the National Labor Relations Act defines mandatory subjects of bargaining as those issues "with respect to wages, hours, and other terms and conditions of employment." Although § 8(d) "does not immutably fix a list of subjects for mandatory bargaining," the list is limited, in general terms, to "issues that settle an aspect of the relationship between the employer and employees" and that have more than a speculative and insubstantial impact upon that relationship. *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.,* 404 U.S. 157, 178, 92 S.Ct. 383, 397, 30 L.Ed.2d 341 (1971); *Axelson, Inc., Subsidiary of U.S.A. v. N.L.R.B., supra* at 93. The Fifth Circuit has similarly characterized mandatory subjects of bargaining as issues that "benefit all of the members of the collective bargaining unit through encouraging the collective bargaining process and vitally affecting the relationship between the employer and employees." *Id.* at 94. Industry promotion funds, such as the NEIF, do not vitally affect the employer-employee relationship. *See Wagor v. Cal Kovens Construction Corp.,* 382 F.2d 813, 815 (5th Cir. 1967). Instead, the NEIF is primarily concerned with the relationship between the industry and the public and with the funding of FWCC and NECA activities.[8] In our judgment, the NEIF provision is not a

[7] The appellee at oral argument conceded that the NEIF provision was not a mandatory subject of bargaining. Nevertheless, we think it important to fully discuss the issue because this court has not previously addressed it.

[8] Money paid by members of FWCC, NECA to the NEIF serves as their membership dues.

mandatory subject of bargaining and therefore does not pertain to or amend a term contained in the assented to collective bargaining agreement. Thus, appellant did not authorize the FWCC, NECA to bind it to the NEIF provision by executing letters of assent prior to the adoption of that provision.

B. Ratification

The district court also held as a matter of law that the appellant ratified the NEIF provision. A principal can ratify the unauthorized act of an agent purportedly done on behalf of the principal either expressly or by implication through conduct that is inconsistent with an intention to repudiate the unauthorized act. *See* Restatement (Second) of Agency §§ 82, 83 (1957); *Shearson Hayden Stone, Inc. v. Leach*, 583 F.2d 367, 369 (7th Cir. 1978); *Weber v. Towner County*, 565 F.2d 1001, 1008 (8th Cir. 1977); *Wagor v. Cal Kovens Construction Corp., supra*. The district court found that appellant ratified the NEIF provision by signing letters of assent during the terms of the collective bargaining agreements and by voluntarily seeking and accepting the benefits flowing from the agreements. But, as we held above, the letters of assent did not authorize the FWCC, NECA to bind the appellant to the NEIF provision and, therefore, cannot serve as a basis for finding the ratification of that provision. Nor can appellant be held to have ratified the unauthorized NEIF provision by continuing to adhere to and enjoy the benefits of the terms of the collective bargaining agreements to which it was contractually bound as a result of the previously executed letters of assent. Thus, we find the district court's rationale for holding that appellant ratified the NEIF provision erroneous.

On the contrary, the district court's findings of fact indicate that the appellant did not ratify the NEIF provision. On March 7, 1977, appellant notified the business managers of the IBEW locals that it would not comply with the NEIF provision. In April of 1977, appellant executed a letter of assent that explicitly rejected the NEIF provisions, as well as NECA's authority to act as appellant's bargaining representative. Moreover, appellant never contributed to the industry fund. Thus,

we conclude that the appellant not only did not ratify the NEIF provision, it expressly repudiated the measure. *See Wagor v. Cal Kovens Construction Corp., supra.*[9]

For the above reasons, we hold that the district court erred in finding that the appellant authorized the appellee to bind it to the NEIF and that appellant subsequently ratified the provision. Accordingly, we REVERSE.

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[9] In *Wagor v. Cal Kovens Construction Corp., supra*, the Fifth Circuit addressed the issue of ratification of an industry promotion fund by an employer, who was not a member of an employers' association. Unlike the appellant, however, the employer in that case never designated the employers' association as its bargaining representative. This difference is not significant, however, because as we have already concluded, the appellant did not authorize the appellee to negotiate the NEIF provision on its behalf. The contract negotiated by the employer in *Cal Kovens Construction Corp.*, though never reduced to writing, permitted the employer to use union labor so long as it paid the laborers the same wages and fringe benefits provided for by the master collective bargaining agreement. The Fifth Circuit rejected the appellant's contention that the employer should be held to have adopted the contract negotiated by the associations and to have breached its obligation to contribute to the industry fund on the ground that "[a]t no time did [appellee] deliberately enter into relations with the Carpenters' Union which were only consistent with the adoption of such contract." *Id.* at 815. The basis for the court's conclusion was threefold: 1) the employer's separate agreement with the union contained no reference to the industry fund; 2) neither the union nor its members had any interest in the fund; and 3) the employer never contributed to the fund. *Id.*

The same factors that lead the court in *Cal Kovens Construction Corp.* to conclude that the employer had not ratified the industry fund provision are present in this case. First, as we previously stated, the prior collective bargaining agreements did not contain the NEIF provision, and appellant never authorized the appellee to negotiate such a provision. Second, the NEIF does not vitally affect the interest of the union or its members and is not being vindicated for the benefit of either. And, finally, the appellant never contributed to the fund. In addition, the appellant in this case expressly repudiated the NEIF provision in the letters of March 9, 1977 that it sent to the business managers of the IBEW local unions and in the letter of assent that it executed in April, 1977. Thus, our holding that appellant did not ratify the NEIF provision is consistent with *Wagor v. Cal Kovens Construction Corp., supra.*

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF FLORIDA—TAMPA DIV.

Civil Action File No. 78-564-Civ. T-H

DEAN J. McDONALD, as Collection Agent for the Trustees of the NATIONAL ELECTRICAL INDUSTRY FUND,

vs.

HAMILTON ELECTRIC, INC., OF FLORIDA,

JUDGMENT

This action came on for trial before the Court, Honorable WM. TERRELL HODGES, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the Plaintiff DEAN J. McDONALD, as Collection Agent for the Trustees of the NATIONAL ELECTRICAL INDUSTRY FUND, recover of the Defendant HAMILTON ELECTRIC, INC., OF FLORIDA, the sum of $3,716.34 with interest thereon at the rate as provided by law, and his costs of action.

Dated at Tampa, Florida, this 8th day of August, 1980.

WESLEY R. THIES
Clerk of Court

By JOHN F. GAY
Deputy Clerk

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 78-564 Civ-T-H

DEAN J. MCDONALD, etc.,
Plaintiff,

vs.

HAMILTON ELECTRIC, INC., OF FLORIDA,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action was commenced on June 20, 1978 by the Plaintiff, Dean J. McDonald, Collection Agent for the Trustees of the National Electrical Industry Fund to enforce provisions of collective bargaining agreements entered into between the Defendant, Hamilton Electric, Inc. of Florida (Hamilton), and certain Local Unions of the International Brotherhood of Electrical Workers (IBEW). Jurisdiction is based upon the provisions of 29 U.S.C. § 185.

On July 1, 1977 the collective bargaining agreements then in force between the Locals and participating employers were amended to provide, *inter alia,* for the establishment of the National Electrical Industry Fund (NEIF). The amendments required payment into NEIF of 1% of the gross labor payroll of all union employers who assented to the collective bargaining agreements. Hamilton denies that it is bound by the amendments mandating the 1% contribution to NEIF.

The central issue is whether the Plaintiff, in his capacity as an employer representative, had the authority to bind the Defendant to the amendments negotiated by the Plaintiff and the Locals to the collective bargaining agreements. The authority of the Plaintiff, if any, is derived from short-form agreements called "letters of assent" which the employer (in this case the Defendant) is required by the Union to sign whenever employees are furnished to an employer through the Union hiring hall.

The case was tried before the Court on April 22, 1980 without a jury. At the conclusion of the evidence counsel waived oral argument and requested the opportunity to submit simultaneous proposed findings of fact and conclusions of law.

Based upon the evidence adduced at trial, an examination of the findings and conclusions proposed by the parties and review of the entire file, the Court makes the following findings of fact and conclusions of law pursuant to Rule 52, Fed. R. Civ. P.:

FINDINGS OF FACT

1. Plaintiff McDonald was appointed the collection agent for the NEIF on July 1, 1977. He is also the Secretary and Manager of the Florida West Coast Chapter of the National Electrical Contractors Association (NECA) and has been since 1969. In this capacity Plaintiff has been the employer representative in all negotiations involving collective bargaining agreements with IBEW Local Unions #915 and IBEW Local Union #941 since 1969, and IBEW Local Union #308 since 1975.

2. Defendant Hamilton is and has been at all times material to this cause a corporation duly organized under the laws of the State of Florida. The Defendant maintains its principal place of business in Pinellas County, Florida where it is engaged as an electrical contractor in the building and construction industry. At all times relevant to this complaint Defendant has utilized union labor from IBEW Local Unions,

and is an employer within the meaning of the applicable collective bargaining agreements.

3. The Florida West Coast Chapter of the National Electrical Contractors Association (FWCCNECA) is a chartered local subdivision of NECA having received its charter in 1957. Its constitution and bylaws are modeled after those of NECA. Its geographic jurisdiction is determined by the jurisdiction of the local unions of IBEW with which it negotiates. It has negotiated collective bargaining agreements for assenting member and non-member contractors with IBEW Local Unions #915, and #941 since 1957 and for Local Union #308 since February 7, 1975. In 1976 it specifically assumed authority to negotiate in behalf of the contractors who, until that time, were represented by the Pinellas County Electrical Contractors Association which was disbanded in 1975.

4. Short-form agreements called Letters of Assent are routinely submitted by IBEW locals to all contractors requesting union labor. The Letters of Assent grant authority to the appropriate local chapter of NECA to negotiate collective bargaining agreements with the designated local union of IBEW. The contractors' execution of a Letter of Assent is a prerequisite to the utilization of union labor. The format for the Letters of Assent is reflected in printed forms supplied by IBEW. There are two varieties: Letter of Assent A, which has no specific termination date, and Letter of Assent B, which calls for a specific termination date. Letter of Assent A is the form normally submitted to the contractor seeking union labor. Letter of Assent B is used only when requested by the contractor.

5. Defendant Hamilton was familiar with the Letter of Assent requirement and signed a Letter of Assent A for Local Unions #915 Inside and Residential on May 6, 1974 and a Letter of Assent B for Local Union #941 Inside on November 1, 1976 (effective through October 31, 1977). In addition, a Letter of Assent was most likely in effect for Local Union #308 Inside and binding upon the Defendant as of March 7, 1977, but neither Plaintiff nor Defendant were able to discover that document prior to trial.

6. It is possible that more than one collective bargaining agreement could be negotiated under the authority of a single Letter of Assent depending upon the term of the Letter of Assent. There was no evidence adduced at trial to support Defendant's contention that collective bargaining agreements were not effective until approved or ratified by a new Letter of Assent. It is undisputed that no revocation or supplement to FWCCNECA's authority to bargain as set out in Letters of Assent A or B was attempted by the Defendant until March 7, 1977.

7. Plaintiff seeks to enforce four collective bargaining agreements against Hamilton. The first is with Local Union #915 Inside, effective December 1, 1976 through November 30, 1977; the second with a Local Union #915 Residential, effective March 1, 1977 through February 28, 1978; the third with Local Union #941 Inside, effective March 1, 1976 through February 28, 1978; and the fourth with Local Union #308 Inside, effective December 1, 1976 through November 30, 1977.

8. Each contract was negotiated and entered into during the term of a valid Letter of Assent executed by Hamilton. In fact, these contracts are but a part of a pattern and course of dealing among IBEW locals, local NECA chapters and union contractors or employers. Defendant Hamilton was aware of and voluntarily participated in this pattern of dealings between the Local Unions and assenting employers.

9. The disputed provision requiring contractors to pay 1% of their gross labor payroll into NEIF was one of several negotiated between NECA and IBEW and submitted for consideration by NECA at its National Board of Governor's convention held in October, 1976. FWCCNECA sent a delegate to that convention. The negotiated proposal was adopted by a vote of the Governors and ultimately incorporated into all existing collective bargaining agreements effective July 1, 1977, including the collective bargaining agreements at issue in this cause.

10. The first tangible evidence of Defendant Hamilton's objection to the 1% clause is Defendant's letter of March 7, 1977 sent to all business managers of local unions from which

Hamilton was hiring its employees. That letter expresses an unwillingness to contribute to NEIF but acknowledges that Hamilton intended to continue operating under all other provisions of the existing contracts. The record reflects that union labor was utilized extensively by Hamilton subsequent to July 1, 1977 for the duration of Hamilton's contracts with the Local Unions. Hamilton incurred gross payrolls as follows:

A. #915 Inside—July, $14,556.64; August, $16,252.75; September, $21,469.12; October, $20,345.17; November, $24,033.55. (all 1977).

B. #915 Residential—(1977) July, $4,893.92; August, $2,903.90; September, $2,409.50; October, $2,775.50; November, $3,318.40; December $4,676.00; (1978) January, $4,460.80; February, $7,293.00.

C. #941 Inside—(1977) July, $9,803.44; August, $12,491.51; September, $14,510.07; October, $11,119.89; November, $6,924.46; December, $10,208.86; (1978) January, $8,024.81; February, $8,546.54.

D. #308 Inside—July, $22,944.30; August, $28,440.41; September, $40,325.09; October, $34,858.81; November, $33,719.89. (all 1977).

11. Defendant's alleged breach of its contractual obligation was referred to the Labor-Management Committee established by local collective bargaining agreements to resolve such disputes. Defendant did not appear before the bipartite panel. The Committee determined, however, that Defendant had violated the terms of the collective bargaining agreements to which it had assented.

CONCLUSIONS OF LAW

1. This Court has original jurisdiction of this cause under the provisions of 29 USC §185 and the case was properly removed pursuant to 28 USC §1441.

2. By virtue of the Letters of Assent signed by the Defendant, Plaintiff had the authority to bind the Defendant to the amendments negotiated by the Plaintiff.

3. Defendant Hamilton has attempted to avoid ratification of the disputed 1% provision by refusing to make any payments into NEIF and by revising subsequent Letters of Assent to voice objections to its obligation to pay into the fund. Regardless, by voluntarily seeking and accepting the benefits flowing from the collective bargaining agreements and by signing letters of assent during the terms of the agreements themselves, Defendant has ratified the collective bargaining agreements in their entirety and is consequently bound by the disputed 1% provision.

3. The following gross labor payroll amounts were incurred by Defendant Hamilton during the applicable time periods:

Union	Amount	1% of Payroll
#915 Inside	$ 96,657.23	$ 966.57
#915 Residential	$ 32,731.02	$ 327.31
#941 Inside	$ 81,956.89	$ 819.56
#308 Inside	$160,288.50	$1,602.89
Total		$3,716.34

Accordingly, it is ORDERED and ADJUDGED:

1. The Clerk is directed to enter judgment in favor of the Plaintiff, and against the Defendant, in the amount of $3,716.34, plus interest according to law, for all of which let execution issue.

2. Counsel for the Plaintiff shall have fifteen (15) days from the date hereof to submit a legal memorandum with attached affidavits in support of its request for attorney's fees. Counsel for the Defendant shall have fifteen (15) days from the date on which Plaintiff's memorandum is filed within which to respond.

DONE and ORDERED at Tampa, Florida, this 8th day of August, 1980.

WM. TERRELL HODGES

United States District Judge

IN THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 80-5723

DEAN J. MCDONALD, as Collection
Agent for the Trustees of the
NATIONAL ELECTRICAL INDUSTRY FUND,
Plaintiff-Appellee,

versus

HAMILTON ELECTRIC, INC., OF FLORIDA,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida

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ON PETITION FOR REHEARING

(March 3, 1982)

Before MORGAN, HILL AND KRAVITCH, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

PHYLLIS KRAVITCH
United States Circuit Judge

EXHIBIT A

AGREEMENT

between

FLORIDA WEST COAST CHAPTER

N.E.C.A.

and

LOCAL 915

INTERNATIONAL

BROTHERHOOD

of

ELECTRICAL WORKERS

TAMPA, FLORIDA

Effective

DECEMBER 1, 1976

Expires

NOVEMBER 30, 1977

(This is a copy amended to reflect the provisions of the IBEW-NECA Agreement, (attached hereto) all of which become effective as of July 1, 1977)

Agreement by and between the Florida West Coast Chapter, NECA and Local Union #915, IBEW.

It shall apply to *all firms* who sign a *letter of assent* to be bound by this Agreement.

As used hereinafter in this Agreement, the term Chapter shall mean the Florida West Coast Chapter, NECA, and the term "Union" shall mean Local Union 915, IBEW.

The term "Employer" shall mean an individual firm who has been recognized by an assent to this Agreement.

Basic Principles

The Employer and the Union have a common and sympathetic interest in the Electrical Industry. Therefore, a working system and harmonious relations are necessary to improve the relationship between the Employer, the Union, and the Public. Progress in industry demands a mutuality of confidence between the Employer and the Union. All will benefit by continuous peace and by adjusting any differences by rational, common sense methods. Now, therefore, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

Effective date—Changes—Grievances—Disputes

SEC. 1 This Agreement shall take effect December 1, 1976 and shall remain in effect until November 30, 1977 unless otherwise specifically provided for herein. It shall continue in effect from year to year thereafter, from December 1 through November 30 of each year, unless changed or terminated in the way later provided herein.

SEC. 2(a) Either party desiring to change or terminate this agreement must notify the other in writing at least 90 days prior to the anniversary date.

(b) Whenever notice is given for changes, the nature of the changes desired must be specified in the notice.

(c) The existing provisions of the agreement shall remain in full force and effect until a conclusion is reached in the matter of proposed changes.

(d) Unresolved issues in negotiations that remain on the 20th of the month preceding the next regular meeting of the Council on Industrial Relations, may be submitted jointly or unilaterally by the parties to this agreement to the Council for adjudication prior to the anniversary of the agreement.

(e) When a case has been submitted to the Council, it shall be the responsibility of the negotiating committee to continue to meet weekly in an effort to reach settlement on the local level prior to the meeting of the Council.

(f) Notice by either party of a desire to terminate this agreement shall be handled in the same manner as a proposed change.

SEC. 3 This agreement shall be subject to change or supplement at any time by mutual consent of the parties hereto. Any such change or supplement agreed upon shall be reduced to writing, signed by the parties hereto, and submitted to the International Office of the IBEW and the National Office of NECA for approval, the same as this agreement.

SEC. 4 There shall be no stoppage of work either by strike or lockout because of any proposed changes in this agreement or dispute over matters relating to this Agreement. All such matters must be handled as stated herein.

SEC. 5 There shall be a Labor-Management Committee of three representing the Union and three representing the Employer. It shall meet regularly at such stated times as it may decide. However, it shall meet within 48 hours when notice is given by either party. It shall select its own Chairman and Secretary.

SEC. 6 All grievances or questions in dispute shall be adjusted by the duly authorized representatives of each of the parties to this agreement. In the event that these two are unable to adjust any matter within 48 hours, they shall refer the same to the Labor-Management Committee.

SEC. 7 All matters coming before the Labor-Management Committee shall be decided by majority vote. Four members of the Committee, two from each of the parties hereto, shall be a quorum for the transaction of business, but each party shall have the right to cast the full vote of its membership and it shall be counted as though all were present and voting.

SEC. 8 Should the Labor-Management Committee fail to agree or to adjust any matter, such shall then be referred to the Council on Industrial Relations for the Electrical Contracting Industry for adjudication. The Council's decision shall be final and binding on both parties hereto.

ARTICLE II

Employer Rights—Union Rights

SEC. 1 Members of the Union, except those meeting the requirement of "Employer" as defined herein, shall not contract for any electrical work. Local Union members taking out licenses as contractors shall not be allowed to work back and forth as contractors or journeymen wiremen, as the occasion arises.

SEC. 2 The Union agrees that if during the life of this agreement it grants to any other Employer in the Electrical Contracting Industry, any better terms or conditions than those set forth in this agreement, such better terms or conditions shall be made available to the Employer under this agreement and the Union shall immediately notify the Employer of any such concessions.

SEC. 3 The employer recognizes the union as the exclusive representative of all its employees performing work within the jurisdiction of the union for the purpose of collective bargaining in respect to wages, hours of employment and conditions of employment. Such representation shall not be altered by contracts with other labor organizations. The jurisdiction of work and the territorial jurisdiction of such work shall be as determined by the International President of the IBEW. Any employer performing work outside the territorial

jurisdiction of Local Union 915, IBEW, shall perform such work in accordance with the agreement of the Local Union of the IBEW having jurisdiction of such work.

SEC. 4 Certain qualifications, knowledge, experience, and financial responsibility are required of everyone desiring to be an Employer in the Electrical Industry. Therefore, an Employer who contracts for electrical work is a person, firm or corporation having these qualifications and maintaining a permanent place of business and suitable financial status to meet payroll requirements, and employing not less than one journeyman wireman regularly.

(a) To provide that an individual desiring to enter the electrical contracting business on a small scale, it is agreed by the parties to this agreement that an individual employer shall be permitted to work with the tools for a period not to exceed two years. The individual employer will be allowed to work with the tools at any time during this two year period providing the employees do not exceed four in number, including himself. When the employer works with the tools, he shall comply fully with all provisions of this agreement.

SEC. 5(a) For all employees covered by this agreement, the Employer shall carry Workmen's Compensation Insurance with a company authorized to do business in the State of Florida, Social Security, and such other protective insurance as may be required by the laws of the State of Florida, and shall also make contributions for all employees to the Florida Unemployment Compensation Commission. The Employer shall furnish satisfactory proof to the Union, upon the Union's demand, that all the required provisions of this Section are being complied with.

(b) It is agreed that in accord with the National Employees Benefit Agreement entered into between the National Electrical Contractors Association and the International Brotherhood of Electrical Workers on September 3, 1946, as amended, that unless authorized otherwise by the National Employees Benefit Board, the individual employer will forward monthly to the designated Local Employees Benefit Board an amount equal to 1% of his gross monthly labor payroll, which

he is obligated to pay to the employees in this bargaining unit, and a completed payroll report prescribed by the National Board. The payment shall be made by check or draft and shall constitute a debt due and owing to the National Board on the last day of each calendar month, which may be recovered by suit initiated by the National Board or its assignee. The payment and the payroll report shall be mailed to reach the office of the appropriate Local Board not later than fifteen (15) calendar days following the end of each calendar month.

Individual employers who fail to remit as provided above shall be additionally subject to having this agreement terminated upon seventy-two (72) hours notice in writing being served by the Union, provided the individual employer fails to show satisfactory proof that the required payments have been paid to the Local Employees Benefit Board.

The failure of an individual employer to comply with the applicable provisions of the National Employees Benefit Agreement shall also constitute a breach of this labor agreement.

(c) When an injury occurs on the job, it shall be the duty of the Foreman or man in charge to immediately notify the doctor or the hospital to which the patient is being taken of the insurance or coverage to facilitate immediate admittance.

The name and address of the Employer's Industrial Insurance Carrier shall be furnished to the persons in charge of the job at the beginning of each job, and it shall be the duty of these employees to apprise themselves of this information.

If any employee becomes sick or is injured to the extent that removal from the job or shop is necessary to provide medical attention, the employer shall provide transportation to and from the doctor's office or hospital. The employee shall be paid for all lost time. If, at the discretion of the doctor, the employee is unable to return to work, he shall not lose any time for that day, not to exceed 8 hours straight time. (It is the intent of this section to provide that the employer shall pay the employee for time away from the job at the regular straight time rate of pay.)

The employer shall furnish and immediately fill out an injury report form on each employee injury that occurs. The report form shall state the date, time, and all other pertinent information of the accident. It shall be the duty of the person in charge of the job to see that the form is promptly furnished to the contractor's office. Copies of the report shall be mailed to the Union. Such shall be concluded within ten (10) days after the injury report has been received by contractor's office.

SEC. 6 The Union reserves the right to discipline its members for violation of its laws, rules and agreements.

SEC. 7 This agreement does not deny the right of the Union or its representatives to render assistance to other labor organizations by removal of its members from jobs when necessary and when the Union or its proper representative decides to do so; but no removal shall take place until notice is first given to the Employer involved.

SEC. 8 When such a removal takes place, the Union or its representative shall direct the workman on such job to carefully put away all tools, materials, equipment, or any other property of the Employer, in a safe manner. The Union will be financially responsible for any loss to the Employer for neglect in carrying out this provision, but only when a safe place is provided for these by the Employer.

SEC. 9 No Employer or member of a firm (Employer) shall be permitted to work with the tools on work covered by the terms of this agreement—except in case of any emergency or minor repairs, and then only when a journeyman wireman is not available. Whenever it is necessary for an Employer or member of a firm (Employer) to perform any work, he shall notify the Steward or Business Manager of the Union of the location and nature of the work.

SEC. 10 The Local Union is a part of the International Brotherhood of Electrical Workers, and any violation or annulment by an individual employer of the approved agreement of this or any other Local Union of the IBEW, other than violations of Paragraph 2 of this section, will be sufficient cause for the cancellation of his agreement by the Local Union, after

a finding has been made by the International President of the Union that such a violation or annulment has occurred.

The subletting, assigning or transfer by an individual employer of any work in connection with electrical work to any person, firm or corporation not recognizing the IBEW or one of its local unions as the collective bargaining representative of his employees on any electrical work in the jurisdiction of this or any other local union to be performed at the site of the construction, alteration, painting, or repair of a building, structure or other work, will be deemed a material breach of this agreement.

All charges of violations of Paragraph 2 of this section shall be considered as a dispute and shall be processed in accordance with the provisions of this agreement covering the procedure for the handling of grievances and the final and binding resolution of disputes.

SEC. 11 It is agreed the Union shall have the jurisdiction over the handling and operation of all electrical tools, fixtures, fittings, equipment and accessories after delivery to individual job sites. This is not to be construed in any way to prevent the common carrier or suppliers truck driver from unloading at job site.

ARTICLE III

Hours—Wage Payment—Working Conditions

SEC. 1 Eight (8) hours work between the hours of 8:00 a.m. and 4:30 p.m. or 5:00 p.m. if one (1) hour is taken for a lunch period, shall constitute a work day. Forty (40) hours within the five (5) days, Monday through Friday inclusive, shall constitute the work week. On all jobs where the majority of crafts vote to go to work at seven (7:00) or seven-thirty (7:30) o'clock, the work day shall be 7:00 a.m. to 3:30 p.m. or 7:30 a.m. to 4:00 p.m. When jobs are set upon these conditions, the Business Manager's office will be notified in advance.

SEC. 2(a) All work performed outside of the regular work hours as set forth in Section 1 of this Article and on a Saturday, Sunday, and the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, or days celebrated as such, shall be paid at two (2) times the Employees regular straight time hourly rate of pay. However, one and one-half (1½)times the regular hourly rate of pay shall apply, Monday through Friday inclusive, 4:30 p.m. until 12:00 midnight, on commercial maintenance and repair. This provision is restricted to remodeling and repair as it applies to existing commercial facilities. Under no circumstances will the reduced overtime be applicable to any new construction or any type of industrial work. Should any of the above named holidays occur on Sunday, the following Monday shall be considered the holiday.

(b) *Shift Work on Power Generating Stations:*

When a single shift is worked, eight hours of continuous employment as outlined in Article III, Section 1 of this agreement shall constitute a work day, beginning on Monday and through Friday of each week.

(c) *Multiple Shifts on Power Generating Stations:*

Shift work may be performed at the option of the employer. However, when shift work is performed it must continue for a period of not less than five consecutive work days. The employer shall have the right to designate the number of employees who shall work on a multiple shift basis. However, the second or third shift shall consist of not less than (5) five workmen and a foreman. The day shift shall work a regular eight hour shift as outlined in the above paragraph. The second shift shall consist of eight (8) hours elapsed time thereafter and the third shift shall consist of seven and one-half (7½) hours elapsed time after the second shift. On the second and third shifts the employees will be allowed thirty minutes for a lunch break beginning four hours after the shift starts work. The hourly rate for men on the second shift shall be twenty percent (20%) over and above the basic hourly rate for elapsed time. The hourly rate for men on the third shift shall be twenty-five percent (25%) over and above the basic hourly rate and they

shall be paid for eight hours. Overtime work at the end of any shift shall be paid for in accordance with the basic agreement. No shift premium will be paid where overtime premium rates are paid for the same hours.

The employer will (except for reasons beyond his control) give at least three days notice to employees before terminating shift work.

For the purpose of this section, the shift which begins at approximately 12:30 a.m., Saturday, shall be considered the last shift of the Friday work day.

The rate of pay for Saturdays, Sundays, and Holidays shall be paid for in accordance with Article III, Section 2(a) of the basic agreement.

SEC. 3 No work shall be performed on Labor Day except in case of emergency, and then only after permission is granted by the Business Manager of the Union.

SEC. 4 The minimum straight time rate of wages shall be:

(a) Senior General Foreman—$2.75 per hour above the journeyman wireman rate.

(b) General Foreman: $1.50 per hour above the journeyman wireman rate.

(c) Foreman: $1.00 per hour above the journeyman wireman rate.

(d) Journeyman Wireman—Eff. 12/1/76—$10.20 per hour.

(e) Apprentice rates shall be based on the following percentages of the applicable journeyman wireman rate of this agreement:

1st Year	—	40%
2nd Year	—	50%
3rd Year (1st 6 months)	—	60%
3rd Year (2nd 6 months)	—	65%
4th Year (1st 6 months)	—	70%
4th Year (2nd 6 months)	—	75%

(f) Journeyman Wireman—

Commercial Wage Rate: Effective 12/1/76—$8.87 per hour.

Industrial Work:

Any job involving facilities that manufacture, produce or process a product (excluding retail food establishments). All work performed for Utility Companies, Municipalities, and Federal or State owned projects (excluding eduational facilities). Race Tracks and Dog Tracks, Hospitals with more than fifty beds (excluding nursing homes and clinics). Shopping malls, shopping centers or business complexes with more than ten individual stores or businesses. Any business complex that includes an elevator system or escalator system in its design.

Commercial Work:

All other types of construction work not included in the definition of Industrial Work outlined above shall be considered Commercial Work.

The rates for service call work and trouble call work shall be determined by the type of work, as defined above, and be paid accordingly.

(g) Cable Splicer not less than $.50 per hour above the journeyman wireman rate.

It is agreed and understood employees performing cable splicer's work shall receive cable splicer's rate of pay. Cable splicing shall consist of the terminating or splicing of any static shielded cable rated 5 KV or above.

SEC. 5(a) Wages shall be paid weekly in cash or payroll check on a local bank. Payday shall be on Thursday of each week. Not more than three days wages may be withheld at any time. In the event the workman is not paid, waiting time at the prevailing rate shall be charged until payment is made. Any workman laid off or discharged by the Employer shall be paid his wages immediately. In the event he is not paid off, waiting time at the prevailing rate shall be charged until payment is made.

(b) Upon receipt of written authorization, the Employer agrees to deduct and forward to the Union or the designated depository the current working dues which become applicable from all members of the IBEW covered by this agreement as outlined in Article IX. The Employer shall be given thirty (30) days notice when the amount to be deducted is changed.

(c) Termination Slips—It is agreed that all employees being separated from employment shall be furnished a separation notice in writing with his final pay, such notice shall list the reason of termination and shall be signed only by his foreman. Such termination slip shall state the reason of termination from his present job and shall not bear any remarks relative to the future employment of the employee. Any employee being laid off shall be notified of same, not less than one (1) hour prior to termination.

SEC. 6(a) On jobs requiring four (4) or more journeymen, one (1) journeyman wireman will be made foreman and shall be limited to ten (10) journeymen. The foreman will be allowed to work with his tools until he has the sixth (6th) journeyman under him. All jobs requiring more than fourteen (14) workmen shall be worked under Section (b).

(b) On all jobs employing two (2) foremen, one (1) of these two (2) will be designated as general foreman who will also be permitted to act as foreman as long as the total number

of workmen does not exceed twenty (20) in number. When the twenty-first (21st) workman is on the job, an additional foreman shall be appointed and the general foreman will no longer serve in the capacity of a foreman. The general foreman and foreman shall not work with the tools nor handle material. The foreman shall be limited to ten (10) workmen.

(c) On jobs where the services of a general foreman will be required, a journeyman wireman shall be made foreman at the start of the job. The foreman shall not work with the tools on these jobs. It is therefore agreed that said jobs shall not be broken up into small jobs to bypass these provisions, regardless of the number of contracts or contractors. However, when separate contracts are awarded by others, the above shall not apply.

(d) One (1) general foreman for every four (4) foremen.

(e) The general foreman shall give orders to foreman only.

(f) On all work under this agreement, the foreman only shall give orders to the workmen.

SEC. 7 Unless a workman is instructed not to report for work on the following work day morning and he so reports and is not assigned to work, he shall receive not less than two (2) hours wages at the prevailing rate as reporting time and released immediately.

SEC. 8 When men are directed to report to a job and do not start work due to weather conditions, lack of material, or other causes beyond their control, they shall receive two (2) hours pay at the prevailing rate unless notified at least one (1) hour before starting time. When the prime contractor controls the work day, if work is started four (4) hours pay shall apply, if work is started after the fourth (4th) hour, a full day's pay shall apply.

SEC. 9 On jobs employing six (6) or more journeymen, if available, every sixth (6th) journeyman shall be sixty (60) years of age or older.

SEC. 10(a) Journeymen shall provide themselves with a conventional kit of necessary tools for the performance of their classification of work. However, no journeyman shall furnish any ladders, stock and dies, vises, hickeys, fish tapes, chisel bars, star drills, taps, wood bits, tap drills, knockout cutters and blow torch, and all other special and expendable tools.

(b) Maximum journeyman tool kit:

1 6 Ft. Rule
Screwdrivers (8" maximum blade)
1 Small Chain Wrench
1 Diagonal Pliers
1 Side Cutting Pliers
1 Needle Nose Pliers
2 Adjustable Pliers
1 Hammer (claw or ball pean 16 oz. maximum)
1 Hacksaw Frame
1 Knife
2 Pencils
1 Torpedo Level
1 Combination Square
1 Plumb & String
1 Center Punch
1 Tool Box
1 Keyhold Saw Handle
1 Lock & Key
1 Cold Chisel (¾" maximum)
1 Awl
1 Small Tap Wrench
1 Small Allen Wrench Set (¼" maximum)
1 Solenoid Voltage Tester (600 volt maximum)
1 Adjustable Wrench (crescent type, 12" maximum)
1 Sta-Kon Tool (pocket size)
1 Small Wire Stripper

SEC. 11 The Employer shall furnish all other necessary tools and equipment, first aid kits, safety equipment, including new liners for hard hats, necessary equipment to work under hazardous conditions, ice water and individual drinking cups, or drinking fountain, and sanitary toilet facilities when not

furnished by the General Contractor, or where other sanitary toilet facilities are not readily available. Workmen will be held responsible for tools or equipment issued to them, provided the Employer furnishes the necessary lockers, tool boxes, or other safe place for storage. The Employer shall also provide a safe, dry place for the workmen's tools.

SEC. 12(a) On all energized circuits or equipment that carries 440 volts or over, as a safety measure, two (2) or more journeymen wiremen must work together.

(b) Workmen shall install all electrical work in a safe and workmanlike manner and in accordance with the applicable code and contract specifications.

SEC. 13 A journeyman shall be required to make corrections on improper workmanship for which he is responsible on his own time during regular working hours, unless errors were made by orders of the Employer or the Employer's representative. Employers shall notify the Union of improper workmanship and the Union assumes responsibility for the enforcement of this provision.

SEC. 14 The representative of Local Union 915, IBEW shall be allowed access to any shop or job at any time during working hours where workmen are employed under the terms of this agreement. However, he shall first contact the general foreman, foreman, steward or contractor's representative on the job or at the shop.

SEC. 15(a) Employers in the territorial jurisdiction of the Union who require workmen to report to the shop daily for work shall pay for traveling time and furnish transportation from shop to job, job to job, and job to shop.

Employers may require employees to report daily to jobs (other than industrial) within the jurisdiction of the Local Union without payment of travel expense.

(b) On all Industrial jobs located ten (10) miles or more by road from the following County Courthouses or City Halls: Hillsborough County Courthouse, Lakeland City Hall, Highlands County Courthouse and Hardee County Courthouse within the jurisdiction of Local Union 915, each employee shall

receive $3.50 per day travel expense and such payment shall not be considered as travel time pay but each employer, at his option, may provide transportation and pay traveling time from shop to job and job to shop on such jobs. It is undertood that all electrical construction work on the properties of the U.S.P.P. Company, located on U.S. Highway 41, the Alafia River and Tampa Bay, will be subject to the $3.50 per day travel allowance.

(c) Where there is a shop located less than ten (10) miles from an industrial job and said shop and job is located beyond ten (10) miles by road from the above stated locations, the $3.50 daily expense allowance shall not apply unless the total estimated man hours exceed 360 man hours. It is therefore agreed that said job shall not be broken up into smaller contracts in order to eliminate the $3.50 daily expense regardless of number of contractors or contracts. It is further agreed that in regard to repair jobs, it may be difficult to arrive at the intent of a contract. In such cases, the Business Manager's office will assist by making spot decisions.

The intention of this section in regard to the $3.50 daily expense is to establish a fair basis for contractors to figure jobs regardless of shop or job locations within the jurisdiction of Local Union 915.

No employer will be permitted to set up a shop or job site office to bypass any provisions of the travel expense sections.

SEC. 16 In the event workmen use their own vehicles in lieu of transportation to be furnished by the Employer, as provided in Section 15 above, they shall receive fifteen cents (15¢) per mile for the use of their vehicles, provided, however, no workman shall be required to use his vehicle for transportation unless he consents thereto.

Under no circumstances shall workmen use their vehicles for delivering tools or material to or from any job for any Employer. This shall not be construed to prevent the workmen from transporting their own personal tools.

SEC. 17(a) The Employer recognizes the right of the Union to appoint a Steward at any shop or on any job where workmen are employed under the terms of this agreement. Such Steward shall be allowed sufficient time during regular working hours to see that the terms and conditions of this agreement are observed at his shop or on his job. The Union may, at its discretion, furnish pay envelopes suitable for its purpose.

Under no circumstances shall a Steward be discriminated against by an employer because of his faithful performance of duties as Steward. The Business Manager's office shall be notified twenty-four hours prior to discharging a Steward.

(b) The Business Manager or Steward shall be notified twenty-four (24) hours prior to all layoffs, when possible.

SEC. 18 Any employee of an Employer party to this agreement, employed on a weekly or monthly salary basis, shall not work with the tools at any time on work covered by this agreement.

SEC. 19 Any provision of this agreement adjudged to be unlawful by a Court of competent jurisdiction shall be treated for all purposes as null and void. The parties shall thereupon seek to negotiate substitute provisions which are in conformity with the applicable laws, but all other provisions of this agreement shall continue to be in full force and effect.

SEC. 20 Employees serving under the Services Reserve Act shall maintain all rights for all practical purposes under this agreement.

ARTICLE IV

Referral Procedure

In the interest of maintaining an efficient system of production in the industry, providing for an orderly procedure of referral of applicants for employment, preserving the legitimate interests of the employees in their employment status within the area and of eliminating discrimination in employment because

of membership or nonmembership in the Union, the parties hereto agree to the following system of referral of applicants for employment:

SEC. 1 The Union shall be the sole and exclusive source of referrals of applicants for employment.

SEC. 2 The Employer shall have the right to reject any applicant for employment.

SEC. 3 The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union and such selection and referral shall not be affected in any way by rules, regulations, by-laws, constitutional provisions or any other aspect or obligation of Union membership policies or requirements. All such selection and referral shall be in accordance with the following procedure.

SEC. 4 The Union shall maintain a register of applicants for employment established on the basis of the groups listed below. Each applicant for employment shall be registered in the highest priority Group for which he qualifies.

GROUP IA All applicants for employment who have four or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a journeyman wireman's examination given by Local Union 915 IBEW, or have been certified as a journeyman wireman by the local JATC, and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties hereto.

GROUP IB All applicants for employment who have four or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a Journeyman's examination given by a duly constituted Local Union of the IBEW and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this Agreement.

GROUP II All applicants for employment who have four or more years' experience in the trade and who have passed a journeyman's examination given by a duly constituted Local Union of the IBEW.

GROUP III All applicants for employment who have two or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market and who have been employed for at least six months in the last three years in the trade under a collective bargaining agreement between the parties to this agreement.

GROUP IV All applicants for employment who have worked at the trade for more than one year.

If the registration list is exhausted and the Union is unable to refer applicants for employment to the Employer within 48 hours from the time of receiving the Employer's request, Saturdays, Sundays and holidays excepted, the Employer shall be free to secure applicants without using the referral procedure, but such applicants, if hired, shall have the status of "temporary employees". The Employer shall notify the Business Manager promptly of the names and social security number of such temporary employees, and shall replace such temporary employees as soon as registered applicants for employment are available under the referral procedure.

Definitions

Normal construction labor market—defined to mean the following geographical area:

Hardee, Highlands, Hillsborough and Polk Counties

The above geographical area is agreed upon by the parties to include the areas defined by the Secretary of Labor to be the appropriate prevailing wage areas under the Davis-Bacon Act to which this agreement applies, plus the commuting distance adjacent thereto, which includes the area from which the normal labor supply is secured.

Resident—means a person who has maintained his permanent home in the above defined geographical area for a period not less than one year or who, having had a permanent home in this area, has temporarily left with the intention of returning to this area as his permanent home.

Examinations—An "examination" shall include experience rating tests if such examination shall have been given prior to the date of this agreement, but from and after the date of this agreement shall include only written and/or practical examinations given by this Local Union 915, IBEW. Reasonable intervals of time for examinations are specified as "semi-annual". An applicant shall be eligible for examination if he has four years experience at the trade.

SEC. 5 The Union shall maintain an "Out of Work List" which shall list the applicants within each group in chronological order of the dates they register their availability for employment.

SEC. 6 Employers shall advise the Business Manager of the Local Union of the number of applicants needed. The Business Manager shall refer applicants to the Employer by first referring applicants in GROUP I in the order of their places on the Out of Work List and then referring applicants in the same manner successively from the Out of Work List in GROUP II, then GROUP III, and then GROUP IV. Any applicant who is rejected by the Employer shall be returned to his appropriate place within his GROUP and shall be referred to other employment in accordance with the position of his GROUP and his place within the GROUP. The only exceptions which shall be allowed in this order of referral are as follows:

(1) When the Employers states bona fide requirements for special skills and abiltities in his request for applicants, the Business Manager shall refer the first applicant on the register possessing such skills and abilities.

(2) If the age ratio clause in this agreement calls for the employment of an additional employee or employees on the basis of age, the Business Manager shall refer the first applicant on the register satisfying the applicable age

requirements provided, however, that all names in higher priority groups, if any, shall first be exhausted before such over-age reference can be made.

SEC. 7 An Appeals Committee is hereby established composed of one member appointed by the Union, one member appointed by the Employer or by the Association, as the case may be, and a Public Member appointed by both of these members.

It shall be the function of the Appeals Committee to consider any complaint of any employee or applicant for employment arising out of the administration by the Local Union of Section 3 to 6 of this Article. The Appeals Committee shall have the power to make a final and binding decision on any such complaint which shall be complied with by the Local Union. The Appeals Committee is authorized to issue procedural rules for the conduct of its business, but it is not authorized to add to, subtract from, or modify any of the provisions of this Article and its decisions shall be in accord with this Article.

SEC. 8 A copy of the referral procedure set forth in this agreement shall be posted on the Bulletin Board in the offices of the Local Union and in the offices of the Employers who are parties to this agreement.

SEC. 9 Apprentices shall be hired and transferred in accordance with the apprenticeship provisions of the agreement between the parties.

ARTICLE V

Health & Welfare Fund

SEC. 1(a) Effective December 1, 1972, 4½% of the gross labor payroll shall be paid into a Health and Welfare Fund. Such funds will be under a jointly administered Trust Fund that meets all applicable requirements of existing State and Federal laws. Approval by the Internal Revenue Service must be secured prior to purchase of coverage.

(b) The payment and payroll report shall be mailed on forms provided by the Trust Committee, to reach the designated depository not later than fifteen (15) days following the end of each calendar month.

ARTICLE VI

Apprenticeship and Training

SEC. 1 There shall be a Joint Apprenticeship and Training Committee of three (3) members representing the Chapter and three (3) members representing the Union. This Committee shall make local standards in conformity with the National Apprenticeship and Training Standards for the Electrical Contracting Industry governing the selection, qualifications, education, and training of all apprentices. It shall also be responsible for training journeymen and others. These local standards will be promptly agreed upon by the parties to this agreement and shall be registered with the National Joint Apprenticeship and Training Committee and the appropriate State or Federal Apprenticeship Registration Agency.

SEC. 2 Members of the Joint Apprenticeship and Training Committee shall be selected by the party they represent. Their term of office shall be three years unless removed by the party they represent or unless they cease to be employed by or cease to be a party to this agreement. The term of one Chapter and one Union representative shall expire each year with successors to be determined in the same manner as the original appointments were made. A Committee member may succeed himself. Each party shall have the right to cast the full vote of its membership and it shall be counted as though all were present and voting.

The Committee shall select from its membership, but not both from the same group, a Chairman and a Secretary who shall retain voting privileges.

The Committee shall meet at least once a month and also when called by the Chairman.

SEC. 3(a) The Committee shall supervise all matters involving apprenticeship training in conformity with the provisions of this agreement and the registered local Apprenticeship Standards. In case of a deadlock, the matter in dispute shall be referred to the parties to this agreement for settlement. Any proposed change in this agreement pertaining to apprenticeship and to training should first be considered by the Committee for their recommendation before being acted upon by the parties to this agreement.

(b) The Committee may establish or authorize a Joint Sub-Committee to be similarly constituted and selected for authorized training programs other than apprentice training programs.

SEC. 4(a) In order to provide diversity of training or work opportunities, the Committee shall have full authority to transfer apprentices from one job or employer to another. All transfers and assignments for work shall be issued by the Committee through the referral office.

(b) The Committee is hereby instructed and authorized to employ a full-time Training Director at such time as is possible and practical.

The Committee shall delegate to the Director that responsibility and authority deemed necessary by the Committee.

SEC. 5 All apprentices must enter the program through the Committee and shall not be eligible for employment until they have been indentured to the Committee. An apprentice who has completed his probationary period may be removed from training by the Committee, in accordance with its rules, for cause. Such removal by the Committee also cancels his classification of apprentice and the opportunity to complete his training.

SEC. 6 An employer shall employ only indentured apprentices secured from the Committee. The Committee shall allow each qualified employer a ratio of one apprentice to three (3) journeymen but only when indentured apprentices are available. Such ratio shall not be exceeded on any job. (This

does not prevent one apprentice from working on a job when there are less than the maximum ratio of journeymen on that job.)

The ratio of one apprentice to three journeymen is to be applied as follows:

1 Journeyman and 1 Apprentice
2 Journeymen and 1 Apprentice
3 Journeymen and 1 Apprentice
4 Journeymen and 2 Apprentices
5 Journeymen and 2 Apprentices
6 Journeymen and 2 Apprentices
7 Journeymen and 3 Apprentices

After the seventh (7th) journeyman and the third (3rd) apprentice, the ratio shall be one (1) apprentice to each additional three (3) journeymen.

SEC. 7 An apprentice shall be under the direct personal supervision of a journeyman at all times. When a journeyman and an apprentice are working together and it becomes necessary for the journeyman to leave for a short period of time, it should not be necessary for any apprentice to accompany the journeyman. An apprentice shall not be permitted to work alone on any job, however, regardless of type of work involved nor regardless of the length of time needed to do the job, except as provided in this section.

SEC. 8 The parties to this agreement shall enter into a Joint Apprenticeship and Training Trust Fund Agreement which shall conform to Section 302 of the Labor-Management Relations Act of 1947, as amended.

The Trustees authorized under this Trust Agreement are hereby authorized to determine the reasonable value of any facilities, materials, or services furnished by either party.

All Funds shall be disbursed in accordance with this Trust Agreement.

SEC. 9 Effective December 1, 1975, all employers subject to the terms of this agreement shall contribute ten cents (10¢)

per man hour worked for each employee of their gross monthly labor payroll.

SEC. 10 Maximum tool kit for apprentices through three (3) years (4th year apprentice tool kit same as for journeymen):

1 Pair Side Cutting Pliers
2 Adjustable Pliers
1 Pocket Knife
1 Torpedo Level
1 Hack Saw Frame
1 6' Rule
2 Screw Drivers (not over 8" Blade)
1 Hammer (claw or ball pean 16 oz. maximum)

ARTICLE VII

Vacation Fund

Each employer shall contribute an amount equal to 4% of the employee's gross labor payroll to the Local Union 915 Vacation Fund on behalf of each employee who is employed pursuant to the terms of this agreement, which fund shall be a jointly administered trust fund that meets all applicable requirements of existing State and Federal Laws.

Payments to the Fund shall be forwarded to a designated depository not later than fifteen (15) calendar days following the end of each calendar month.

ARTICLE VIII

Local Pension Fund

Effective December 1, 1975, the Employer shall contribute three percent (3%) of gross labor payroll to a Local Pension Fund which shall be established in accordance with all federal and state laws.

ARTICLE IX

Electrical Industry Accounts

All payments to the respective accounts pursuant to the terms of this agreement shall be listed on joint forms provided for such. All forms are to be typewritten.

The payment and form must reach the Trustees or their agent not later than fifteen (15) days following the end of each calendar month for which they are due. After said fifteen (15) days, the Union may remove all employees of the delinquent employer. Such removal does not constitute a breach of this agreement.

The cost of the forms shall be borne by each of the respective accounts to which payments are made.

Employers who fail to remit as provided above shall be subject to having this agreement terminated upon seventy-two (72) hours notice in writing served by the Union, provided the employer fails to show satisfactory proof that the required payments have been made.

In the event that Employers fail to remit all payments to the respective accounts pursuant to the terms of this agreement within thirty (30) days after the same shall be due and it shall become necessary for the Union to place the collection of said payments in the hands of an attorney, then in that event the Employer shall be responsible to the Union for all costs in connection with the collection of said payments, including a reasonable attorney's fee, which shall not be less than 15% of the delinquent amount.

SIGNED FOR FLORIDA WEST COAST CHAPTER NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION	SIGNED FOR LOCAL UNION 915 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
Chairman, Tampa Division	President
Chapter Manager	Business Manager
Date	Date

MEMORANDUM OF AGREEMENT

RE: CLARIFICATION OF SENIOR GENERAL FOREMAN PROVISION

In accord with directive of Article 1, Section 6(a) of the Collective Bargaining Agreement between Florida West Coast Chapter, NECA and Local 915, International Brotherhood of Electrical Workers, we, the undersigned, stipulate the following provisions as to Senior General Foreman to prevail as if the same had been made a part of the Agreement:

> When more than one General Foreman is required, one General Foreman shall become Senior General Foreman. The Senior General Foreman shall be in charge of the General Foreman. General Foremen shall give orders to foremen only.

SIGNED FOR FLORIDA WEST COAST CHAPTER, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

DEAN J. MCDONALD

Chapter Manager

11-26-75

Date

SIGNED FOR LOCAL UNION 915, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

J. G. CAIN

Business Manager

11-24-75

Date

AMENDMENT

The inside Construction Agreement between the Florida West Coast Chapter, NECA and Local Union 915 IBEW, is hereby mutually amended effective July 1, 1977 to read as follows:

ARTICLE II, SECTION 1. The Union understands the Employer is responsible to perform the work required by the owner. The Employer shall, therefore, have no restrictions except those specifically provided for in the collective bargaining agreement, in planning, directing and controlling the operation of all his work, in deciding the number and kind of employees to properly perform [sic] the work, in hiring and laying off employees, in transferring employees from job to job within the Local Union's geographical jurisdiction, in determining the need and number as well as the person who will act as Foreman, in requiring all employees to observe the Employer's and/or owner's rules and regulations not inconsistent with this Agreement, in requiring all empolyees to observe all safety regulations, and in discharging employees for proper cause.

ARTICLE III, SECTION 2 (b . SHIFT WORK. When so elected by the contractor, multiple shifts of at least five (5) days' duration may be worked. When two (2) or three (3) shifts are worked:

The first shift (day shift) shall be worked between the hours of 8:00 a.m. and 4:30 p.m. Workmen on the day shift shall receive eight (8) hours' pay at the regular hourly rate for eight (8) work [sic].

The second shift (swing shift) shall be worked between the hours of 4:30 p.m. and 12:30 a.m. Workmen on the "swing shift" shall receive eight (8) hours' pay at the regular hourly rate plus 10% for seven and one-half (7½) hours' work.

The third shift (graveyard shift) shall be worked between the hours of 12:30 a.m. and 8:00 a.m. Workmen on the "graveyard shift" shall receive eight (8) hours' pay at the regular hourly rate plus 15% for seven (7) hours' work.

A lunch period of thirty minutes shall be allowed on each shift. All overtime work required after the completion of a regular shift shall be paid at one and one-half times the "shift" hourly rate.

There shall be no pyramiding of overtime rates and double the straight-time rate shall be the maximum compensation for any hour worked.

There shall be no requirement for a day shift when either the second or third shift is worked.

ARTICLE VI, SECTION 6. The Committee is authorized to indenture a total number of apprentices not to exceed a ratio of one apprentice to three journeyman wiremen who are normally employed under the terms of this Agreement.

An individual Employer shall employ only indentured apprentices secured from the Committee. The Committee will determine whether or not an individual Employer with one, two or any number of Journeyman wiremen is entitled to an apprentice, but no Employer is guaranteed any number of apprentices.

The Committee shall allow each qualified Employer a ratio of one apprentice to three Journeyman wireman [sic] when indentured apprentices are available. Such ratio shall apply on any job. However, this does not prevent one apprentice from working on a job with one journeyman when there are less than the allowable ratio of journeymen on that job.

This ratio is to be interpreted to allow the following apprentice to journeyman relation on any job or in any shop.

1 Apprentice to 1 Journeyman
1 Apprentice to 2 Journeymen
1 Apprentice to 3 Journeymen
2 Apprentices to 4 Journeymen
2 Apprentices to 5 Journeymen
2 Apprentices to 6 Journeymen
3 Apprentices to 7 Journeymen

etc.

ARTICLE II, SECTION 5(b). It is agreed that in accord with the National Employees Benefit Agreement entered into between the National Electrical Contractors Association and the International Brotherhood of Electrical Workers on September 3, 1946, as amended, that unless authorized otherwise by the National Employees Benefit Board, the individual Employer will forward monthly to the designated Local Secretary-Treasurer, an amount equal to 3% of his gross monthly labor payroll which he is obligated to pay to the employees in this bargaining unit, and a completed payroll report prescribed by the National Board. The payment shall be made by check or draft and shall constitute a debt due and owing to the National Board on the last day of each calendar month, which may be recovered by suit initiated by the National Board or its assignee. The payment and the payroll report shall be mailed to reach the office of the appropriate Local Secretary-Treasurer not later than fifteen (15) calendar days following the end of each calendar month.

Individual Employers who fail to remit as provided above shall be additionally subject to having this Agreement terminated upon seventy-two (72) hours' notice, in writing, being served by the Union, provided the individual Employer fail [sic] to show satisfactory proof that the required payments have been paid to the Local Secretary-Treasurer.

The failure of an individual Employer to comply with the applicable provisions of the National Employees Benefit Agreement shall also constitute a breach of this Labor Agreement.

ARTICLE IX. The parties agree to the establishment of a legally constituted trust to be called the National Electrical Industry Fund.

Each individual Employee shall contribute one percent (1%) of the gross labor payroll to be forwarded monthly to the National Electrical Industry Fund in a form and manner prescribed by the trustees no later than fifteen (15) calendar days following the last day of the month in which the labor was performed. Failure to do so will be considered a breach of this Agreement on the part of the individual Employer.

The National Electrical Contractors association [sic] will be responsible to see that the objects of the fund, as outlined in the trust, are adhered to strictly.

No part of the funds collected under this trust shall be used for purely social activities.

No part of the funds collected under this trust shall be used for any purpose which is held to be in conflict with the interests of the International Brotherhoood of Electrical Workers and its Local Unions.

FLORIDA WEST COAST CHAPTER, NECA	LOCAL UNION 915, IBEW
DEAN J. MCDONALD	J. G. CAIN
Chapter Manager	Business Manager
1/31/77	1/31/77
Date	Date

APPROVED

FEB 4 1977

INTERNATIONAL OFFICE—I.B.E.W.

CHARLES H. PILLARD President